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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

RS

10
11 Dan Nghia (Margaret) Chau,

CV 13 80 211 MISC

Case No.

12 Petitioner,

13 vs.

14 Macy's Inc.,

15 Respondent

PETITION TO VACATE ARBITRATION
AWARD

(9 U.S.C.A. §§10-12)

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18 Petitioner Margaret Chau, by and through counsel moves for an order, pursuant to Title 9,
19 United States Code, Section 10, vacating the arbitration award entered by AAA arbitrator
20 Sheldon Michaels entered in this judicial district on July 18, 2013 (the "Award"), and respectfully
21 alleges:

22 JURISDICTION AND VENUE

23 1. Petitioner Margaret Chau is an individual residing in the City of Stockton, State of
24 California.

25 2. On information and belief, Respondent Macy's Inc. is a corporation organized and
26 existing under the laws of the State of Delaware with its principal place of business outside of the
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1 State of California and located in Cincinnati, Ohio and/or New York, New York. See Exhibit A
2 to the Declaration of Dan Price in Support of the Petition to Vacate Award ("*Price Dec*").

3 3. The jurisdiction of this Court is invoked under Title 9, United States Code, and
4 particularly Section 10 thereof, and under Title 28 U.S.C. § 1332. The amount in controversy,
5 exclusive of interest and costs, is in excess of \$75,000. Venue is proper in this judicial district
6 pursuant to 9 USCA §§ 10, 11.

7 **FACTUAL BACKGROUND**

8 4. In accepting employment with Respondent to engage in the sale of retail goods in
9 interstate commerce and/or which employment contemplated sales activities which affected
10 commerce, Petitioner agreed to arbitrate controversies arising out of the employment pursuant to
11 certain arbitration rules (the so-called "Solutions InSTORE Early Dispute Resolution Rules and
12 Procedures" – hereinafter the "InSTORE Rules" which InSTORE Rules provide for the
13 governance of the arbitration pursuant to the Federal Arbitration Act and in relevant part as
14 follows:

15 Article 2: Claims Subject to or Excluded from Arbitration.

16 Arbitration is administered by the American Arbitration Association ("AAA") under these
17 Solution InSTORE Early Dispute Resolution Rules and Procedures and the employment
18 arbitration portion of the AAA'S Employment Arbitration Rules and Mediation
19 Procedures. . . . If there are any differences between the Solutions InSTORE Early
20 Dispute Resolution Rules and Procedures and the employment arbitration portion of the
21 AAA's Employment Arbitration Rules and Mediation Procedures, the Solutions InSTORE
22 Early Dispute Resolution Rules and Procedures shall apply.

23 Article 18: Enforceability

24 The arbitration agreement, the arbitration proceedings and any award rendered
25 pursuant to them shall be interpreted under, enforceable in accordance with, and subject to
26 the Federal Arbitration Act, 9 U.S.C. Sec 1 et seq, regardless of the state in which the
27 arbitration is held or the substantive law applied in the arbitration. . . .

28 Article 19: Appeal Rights

The decision rendered by the Arbitrator shall be final and binding as to both the
Associate and the Company. Either party may appeal the Arbitrator's decision to a court
in accordance with the provisions of the Federal Arbitration Act, 9 U.S.C. Sec 1 et seq.

The InSTORE Rules are attached to the "*Price Dec*" as Exhibit B and incorporated by this
reference.

1 5. A controversy arose between Petitioner and Respondent resulting in allegations by
2 Petitioner of invidious discrimination practiced by Respondent against Petitioner during the
3 course of Petitioner's employment with Respondent and thereafter upon Petitioner's termination
4 of employment by Respondent, under state anti-discrimination laws.

5 7. Pursuant to the InSTORE Rules, the parties then submitted the controversy to arbitration
6 selecting AAA arbitrator Sheldon Michaels as the sole arbitrator to determine the issues in
7 controversy. The matter was set for arbitration to begin on July 9, 2013 in San Francisco,
8 California. The e-mail from the American Arbitration Association setting the matter for
9 arbitration in San Francisco on such date is attached to the *Price Dec* as Exhibit C and
10 incorporated by this reference.

11 8. After the case was set for arbitration, Respondent made a motion for summary judgment.
12 The matter was briefed and a telephonic hearing was held by Arbitrator Sheldon Michaels.
13 Arbitrator Michaels, on information and belief, held the telephonic hearing from his office in
14 Oakland, California. Counsel for Petitioner appeared by telephone from his office in Palo Alto,
15 California, and counsel for Defendant appeared by telephone, on information and belief from his
16 office in St. Louis, Missouri.

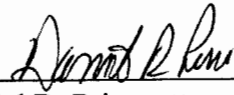
17 9. On or about July 18, 2013 Arbitrator Michaels made the Award in writing, granting
18 summary judgment to the Respondent on all Petitioner's claims. The Award was duly
19 acknowledged and delivered/e-mailed to the parties on July 18, 2013. A copy of the e-mail
20 transmittal of the Award is attached as Exhibit D to the *Price Dec* and incorporated by this
21 reference. A copy of the Award is attached as Exhibit E to the *Price Dec* and incorporated by this
22 reference.

23 10. Petitioner hereby seeks to vacate the Award pursuant to the Federal Arbitration Act, 9
24 USCA § 10 and relevant federal case law, and for the reasons more fully set forth in the
25 accompanying Memorandum of Points and Authorities in Support of the Petition to Vacate
26 Award (the "Memorandum"), in that and in summary the arbitrator, while being aware of the
27 relevant law, manifestly disregarded the hornbook, firmly entrenched law regarding the standard
28 of proof for award of summary judgment.

1 11. In support of this Petition, Petitioner submits this Petition, the Notice of Petition to Vacate
2 Arbitration Award, the accompanying Memorandum, and the Declaration of Dan Price in Support
3 of the Petition to Vacate Award, with attached Exhibits.

4 12. Wherefore, Petitioner moves this Court for an order vacating the Award.

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6 Dated: 10/7/13


Daniel R. Price, attorney for Petitioner